IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 1118 of 1991

For Approval and Signature:

Hon'ble MR.JUSTICE A.L.DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

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STATE OF GUJARAT

Versus

NATVERLAL Z PATEL

Appearance:

1. Criminal Appeal No. 1118 of 1991

MR. BHUKARI, A.P.P for Appellant No. 1

NOTICE SERVED for Respondent No. 1-3

MR YS MANKAD for Respondent No. 1,2,3

MR BY MANKAD for Respondent No. 1,2-3

CORAM : MR.JUSTICE A.L.DAVE

Date of decision: 13/07/2001

ORAL JUDGEMENT

1. The State of Gujarat has preferred this appeal

against judgement and order rendered by Chief Judicial Magistrate, Kachchh at Bhuj on January 13, 1991 in Criminal Case No. 1221/1987 acquitting present respondents of the charges punishable under Sections 17 and 16 of the Prevention of Food Adulteration Act.

2. The facts of the case in brief are that on 05.08.1986 at about 10:00 a.m. Food Inspector of Bhuj, Nagar Palika visited the Oil Mill of the respondents at Bhuj. He introduced himself as such and after summoning one Bharat Kumar Ramniklal Gajjar as a Panch purchased 375 gram of ground nut oil from a sealed tin of Bhagyalaxmi brand ground nut oil, amongst the seventeen tins found at the place for sale. The sample purchased was divided into three equal parts and placed into clean and dry bottles. The bottles were got sealed, wrapped and then one of the sample was sent to the public analysts for analysis. The report of the public analyst indicated that the sample did not conform to the standards prescribed under the Prevention of Food Adulteration Act and Rules. The sanction for prosecution was obtained from the Local Health Authority and permission was granted as required under Section 20 of the Act. A complaint was lodged by the Food Inspector before the Chief Judicial Magistrate at Bhuj. Learned Chief Judicial Magistrate framed charges at Exh.65. The accused persons pleaded not guilty to the charge and expressed their desire to face the trial.

3. Considering the evidence led by the prosecution learned Chief Judicial Magistrate came to the conclusion that the case was not established against the accused persons and ultimately the accused persons came to be acquitted by the impugned order.

4. Aggrieved by the said judgement and order, present appeal is preferred by the State of Gujarat.

5. The appellant - State of Gujarat is represented by learned Additional Public Prosecutor Mr. Bhukari whereas the respondents are represented by learned Advocate Mr. Y.S. Mankad.

6. Mr. Bhukari, submitted that the learned Chief Judicial Magistrate has acquitted the accused persons on the ground that the consent for prosecution is invalid. As the reasons are not indicated in the consent, he has relied on the decision in the case of STATE OF GUJARAT Vs. IMTIYAJ HAJI ABDUL SATTAR 1998 (1) G.L.R. 214 to indicate that reasons are not required to be recorded while granting sanction for prosecution. He, therefore,

urged that the appeal may be allowed.

7. Learned Advocate Mr. Y.S. Mankad appearing for the respondent submitted that so far proposition of law as established by the said judgement relied upon by Mr. Bhukari in concerned, the same cannot be challenged but, he submitted that even on merits conviction could not have been recorded by learned Magistrate, as the evidence led by the prosecution is not beyond shadow of reasonable doubt. In order to substantiate his contention he has drawn attention of this Court to the fact that on the very day and that very time on which the sample was taken by present complainant another Food Inspector had come to the place of the business of the respondents and had taken samples. That sample was also sent for analysis and it was found that the sample conformed to the standards prescribed and there was no adulteration. Mr. Y.S Mankad therefore submitted that the possibility of some mistake either in sampling or cleaning of bottle or even analysis cannot be ruled out. He submitted that all the seventeen tins were of the same batch and therefore there could not have been adulteration in one tin and no adulteration in another tin. How this could have happened has not been explained by the prosecution. Learned Magistrate has discarded this defence of the accused only on the ground that the sample was not taken from the same tin. Mr.Y.S. Mankad submitted that the samples were from the same batch and they have been examined by public analyst, and in one sample it is stated that it conforms to the prescribed standards, whereas, the other does not conform to the prescribed standards. Mr. Y.S.Mankad submitted that, under the circumstances the report becomes doubtful and benefit has rightly been given to the accused persons. Mr. Y.S. Mankad lastly urged that almost fifteen years have passed since the prosecution and ten years since acquittal, and therefore also, this Court may not entertain this appeal.

8. Having gone through the record and proceedings closely, and having given a thoughtful consideration to the contentions raised before this Court, it is found that there are no merits in the appeal for the reasons recorded hereinafter.

9. In the first place it requires to be noted that Panch Bharat kumar Ramniklal Gajjar has not supported the prosecution case herein.

9.1. It also appears that even the complainant admits that another Food Inspector Mr. Saraiya has also taken sample from the same Mill. He denies that samples were

taken from the same tin. The panchnama of taking sample in the instant case is produced on record at Exh. 96 which indicates that it was done on 05.08.1986 at 10:00 a.m. in presence of Panch Bharat Kumar Ramniklal Gajjar. The other panchnama drawn by Food Inspector Mr. Suraiya has been brought on record at Exh. 102 which also indicates that the panchnama was drawn on 05.08.1986 at 10:00 a.m. and there also the Panch was Bharat Kumar Ramniklal. The report of the Central Food Laboratory in that case is at Exh. 103 which specifically states that the sample conformed to the standards of ground nut oil laid down in item A.17.03 of Prevention of Food Adulteration Rules.

10. If two Food Inspectors have visited the said premises on the same day at the same time and has taken samples from the tins lying for sale of the same brand from the manufacturer, it is difficult to accept that one of them would conform to the standards and the other would not, particularly when it has not been established by the prosecution that seventeen tins were of different batch. Against this the say of the accused consistently has been that it was the same batch or lot.

11. In view of what is discussed above the prosecution case cannot be considered as having been established to the hilt. It cannot be said that it is proved beyond reasonable doubt. There appears no reason for this Court to interfere with the impugned judgement and order recording acquittal of the respondents and that too after a decade of acquittal. No illegality or other infirmity is indicated by the appellant. The appeal therefore must fail and the same is dismissed.

(A.L. DAVE,J.)

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